

Final

**RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion No. 97-13, Request No. 718
Issued July 10, 1997**

Facts:

The inquiring attorney is an associate in a small firm that represents clients in family court matters. Attorneys in the firm have general access to files of all clients of the firm and often collaborate on client matters. The inquiring attorney's spouse is an associate of a law firm that has numerous legal departments. His/her spouse does not represent clients in family court matters and does not have access to the files of attorneys in that firm who do. In the past, lawyers from the inquiring attorney's firm represented clients in family court matters in which a lawyer in the spouse's firm was the opposing counsel. The inquiring attorney anticipates that the situation will present itself again.

Issues Presented:

The inquiring attorney asks whether disclosure of the relationship and client consent are required before he/she and other attorneys in his/her firm may represent a client in a family court matter in which a lawyer in the spouse's law firm is opposing counsel.

Opinion:

Disclosure of the relationship and client consent are not required unless on the particular facts an actual conflict exists or could reasonably be foreseen. Rule 1.8 (i) of the Rules of Professional Conduct permit the inquiring attorney and other lawyers in his/her firm to represent a client when a lawyer in his/her spouse's law firm is opposing counsel, if the spouse is not involved in the matter. Where, however, the inquiring attorney's representation of a client would be materially limited by his/her own interest, the representation would be prohibited under Rule 1.7(b) unless he/she reasonably believes the representation will not be adversely affected and the client consents.

Reasoning:

Pursuant to Rule 1.8(i), lawyers who are spouses may not act as opposing counsel in a matter unless their clients consent after consultation regarding the relationship. The rule states:

- (i) A lawyer shall not represent a client in any matter where the lawyer knows that the lawyer's parent, child, sibling, or spouse is the lawyer representing an adverse

party to the transaction except upon consent by the client after consultation regarding this relationship.

The Comment to Rule 1.8 makes clear that the disqualification stated in paragraph (i) is personal and is not imputed to other lawyers in the spouses' law firms. See R.I. Sup. Ct. Ethics Advisory Panel Op. 91-19 (1991). In the instant inquiry, the spouses are not litigating against each other, and therefore Rule 1.8(i) does not prohibit the representation. Moreover, the lawyers in the spouses' firms are not per se disqualified by imputation under Rule 1.10(a), as that rule would disqualify other lawyers in the respective firms only when the disqualification of the inquiring attorney or the spouse arises under Rule 1.7, 1.9, 2.2 or 1.8(c), but not when it arises because of Rule 1.8(i). See Rule 1.10(a); Geoffrey C. Hazard, Jr. and W. William Hodes, The Law of Lawyering, §1.8:1002 at 284.

Nevertheless, the inquiring attorney must consider Rule 1.7(b) and whether under certain circumstances his/her representation of a client may be materially limited by his/her own interests when a lawyer in the spouse's firm is opposing counsel, as where, for example, a benefit would inure to the spouse's firm, to the spouse, and therefore to the inquiring attorney. See Michigan Comm. of Professional and Judicial Ethics Op. R-3 (1989) (personal disqualification not imputed to spouses' firms unless spouses have personal interest in the outcome of case); Hazard and Hodes, at 284. Such a benefit might be in the form of a substantial fee or some other advantage which indirectly redounds to the inquiring attorney. In this event, the representation would be prohibited by Rule 1.7(b), unless the inquiring attorney believes that the representation will not be adversely affected and the client consents after consultation. See Rule 1.7(b); Hazard and Hodes, at 284. Because a conflict under Rule 1.7(b) is imputed to other lawyers in a disqualified lawyer's firm pursuant to Rule 1.10(a), the other lawyers in the inquiring attorney's firm also would be disqualified unless the requirements of Rule 1.7(b) are satisfied.

The Panel therefore concludes that absent a conflict of interest under Rule 1.7, 1.8(c), 1.9, or 2.2, the Rules of Professional Conduct permit the inquiring attorney and other lawyers in his/her law firm to represent a client in a matter in which a lawyer in the spouse's law firm is opposing counsel without the informed consent of the clients, provided that the spouse is not involved in the matter. Even where disclosure and client consent are not required, it would be prudent for the attorneys to inform their respective clients of the relationship so that the clients' wishes may prevail. See Ethics Committee of State Bar of Montana Op. 950407 (1995).